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No. 87-206

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

STATE OF ALASKA,
Petitioner,
v.
TRUSTEES FOR ALASKA, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE ALASKA SUPREME COURT

PETITIONER'S REPLY MEMORANDUM

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SUMMARY OF ARGUMENT

The State of Alaska's primary contention in this petition is that there is no implied private cause of action under section 6(i) of Alaska's Statehood Act 1/ allowing private parties to question whether the Alaska Legislature improperly failed to impose a cash rent and royalty requirement upon hardrock mineral leases of mineral lands granted to Alaska under the Act. Respondent Trustees for Alaska and associated private interest groups claim that "the private cause of action doctrine was predicated on the [federal] Court's limited jurisdiction

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1/ Pub. L. 85-508, 72 Stat. 339 (1958) (set forth in note preceeding 48 U.S.C. § 21).

under the federal Constitution." Respondents' Brief in Opposition ("Resp. Br.") at 16 n.7. Building upon this erroneous claim, the private interest groups conclude that, because the Alaska state courts are courts of general jurisdiction, the "private cause of action doctrine ... has no place in Alaska state courts." Resp. Br. at 17. 2/

2/ Because the central issue presented in Alaska's petition concerns the private cause of action doctrine, this reply brief focuses upon the private cause of action arguments presented in the Respondents' Brief, and will restrict comment on other issues to this footnote. First, while Alaska agrees that there is no general bar to state court jurisdiction to decide issues involving the Alaska Statehood Act, Alaska does not agree with respondents' contention that the state court has concurrent jurisdiction to hear an action brought to enforce the section 6(i) conditions to the Alaska Statehood Act land grant. Besides

The arguments of the respondent private interest groups are so obviously devoid of merit that the Court should grant this petition and summarily reverse the Alaska Supreme Court. First, the cases the private interest groups cite do not support their claim that state courts are free to disregard the federal private cause of action doctrine when applying federal law. Second, the private interest groups have failed to either

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defining the exclusive party and exclusive remedy, section 6(i) also expressly confers exclusive jurisdiction upon a single court, the United States District Court for the District of Alaska. Second, respondents raise no issue concerning the compliance of Alaska's mineral leasing system with the section 6(i) conditions which has not already been adequately addressed in Alaska's petition.

cite or address, let alone rebut, the cases Alaska cites which hold that there is no private cause of action to seek to enforce a condition of a statehood grant.

ARGUMENT

1. Respondent private interest groups ignore the distinctions among jurisdiction, standing, cause of action, and relief.

Respondents' Brief is rife with confusion over the distinctions between jurisdiction, standing, cause of action and relief, distinctions succinctly expounded in Davis v. Passman, 442 U.S. 228, 239 n. 18 (1979) (citations omitted)(emphasis in original):

> [I]t may be said that jurisdiction is a question of whether a federal court has the power, under the Constitution or laws of the United States, to hear a case; standing is a question of whether a

> plaintiff is sufficiently adversary to a defendant to create an Art. III case or controversy, or at least to overcome prudential limitations on federal-court jurisdiction; cause of action is a question of whether a particular plaintiff is a member of the class of litigants that may, as a matter of law, invoke the power of the court; and relief is a question of the various remedies a federal court may make available.

The private interest groups have, in essence, argued that the "cause of action" requirement has been subsumed within the "standing" and "jurisdiction" requirements. In doing so, they have ignored the fundamental principle, most particularly and appropriately applicable in the statehood act context, that "(s)tatutory rights and obligations are

established by Congress, and it is entirely appropriate for Congress, in creating these rights and obligations, to determine in addition, who may enforce them and in what manner." Id. at 241. The private interest groups would, in effect, give the state courts free reign to create implied private causes of action under a federal law, in derogation of the limitations of that federal law. By contrast, Alaska contends that state courts are prohibited from creating federal rights, i.e., judicially cognizable causes of action, under a federal law when Congress has not seen fit to do so. A contrary conclusion would mean that state courts have the power to legislate---to amend federal law.

2. Respondents' citations do not support the proposition that state courts are free to ignore the private cause of action doctrine when hearing cases under federal law.

The private interest groups cite only three cases for their proposition that state courts may disregard the federal private cause of action doctrine when hearing an action based upon federal law. None support their argument that the private cause of action limitation is only operative in federal courts, and that state courts have unbounded freedom to imply private federal causes of action.

Respondent private interest groups imply that Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977) holds that state courts are not bound by "the federal cause of action doctrine."

Resp. Br. at 14 (emphasis in the original). However, Arlington concerns standing, not private cause of action. Moreover, the footnote from Arlington which respondents cite, 429 U.S. at 262 n.8, merely holds that state court standing requirements for a challenge to a zoning decision do not determine standing in a federal constitutional challenge to the zoning decision in federal court. There is nothing in Arlington which suggests that a state court is somehow free from the constaints of a federal law when applying that federal law.

The private interest groups next cite Middlesex County Sewerage Authority v. National Sea Clammers Association, 453 U.S. 1, 13 (1981) for the proposition that the "basic inquiry in deciding whether a private cause of

action exists in federal court is whether Congress intended to create such a private cause of action." Resp. Br. at 15 (emphasis in original). Presumably, the private interest groups wish to raise the negative implication that Congressional intent is irrelevant when a state court is deciding whether a private cause of action should be implied under federal law. This argument must fail because there is no predicate for a negative implication: Sea Clammers neither expressly restricts its holding to actions in federal courts nor uses language suggesting that the rule only applies to federal courts. The opinion does not even use the phrase "federal court" on the page of the case respondents cite, let alone emphasize it as respondents did in their brief.

Instead, the opinion states that the question is "whether Congress intended to create a private right of action" and that the "key to the inquiry is the intent of the Legislature." Sea Clammers, 453 U.S. at 13. Nothing in the opinion or its logic would suggest that a plaintiff could evade the limitations on the implication of private causes of action by the simple expedient of filing an action under federal law in state, rather than federal, court.

Finally, the private interest groups claim that "Justice Powell, the author of [Sea Clammers], later explained the basis for this analysis [in Sea Clammers]" in Cannon v. University of Chicago, 441 U.S. 677, 746-747 (1979), that his "explanation" supports the proposition that the

private cause of action doctrine is based upon the limited nature of federal court jurisdiction, and that it follows that the private cause of action doctrine does not apply as a limitation in general jurisdiction state courts. Resp. Br. at 15-16. 3/ This argument cannot withstand even cursory scrutiny.

It is true that Justice Powell noted that one consequence of implying a private cause of action is that federal court federal-question jurisdiction is correspondingly expanded. Cannon, 441 U.S. at 746-747 n.17. However, Justice Powell clearly

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3/ Respondents are incorrect in suggesting that Cannon followed Sea Clammers. Cannon preceeded Sea Clammers by two years.

did not indicate that private cause of action limitations are in any way predicated upon the fact that federal jurisdiction is limited. Instead, he merely recognized the inevitable expansion of federal court jurisdiction, which occurs concurrently with the implication of a private right of action, is a collateral evil of improperly expansive implications of private causes of action. Thus, the footnote cited by the respondent private interest groups concludes with the statement: "To the extent an expansive interpretation of section 1331 permits federal courts to assume control over disputes which Congress did not consign to the federal judicial process, it is subject to the same criticisms of judicial implication of private actions discussed in the

text." Id. (Emphasis added).

Finally, it is most anomalous to suggest that Justice Powell's dissent in Cannon supports unbounded freedom for judicially active state courts to imply private causes of action under federal statutes. The unmistakable point of Justice Powell's dissent was to criticize the standards set forth in Cort v. Ash, 422 U.S. 66 (1975) as allowing judges too much latitude to imply private causes of action. Justice Powell concluded his dissent by stating:

> I believe the need both to restrain courts that too readily have created private causes of action, and to encourage Congress to confront its obligation to resolve crucial policy questions created by the legislation it enacts, has become compelling.

441 U.S. at 749. Justice Powell's position was later vindicated when he wrote the majority opinion in Sea Clammers, which like other more recent Supreme Court cases, focused on Congressional intent, and downplayed the other factors set forth in Cort.

Arlington, Sea Clammers and Cannon are the only cases cited by respondent private interest groups in support of their claim that the private cause of action doctrine is inapplicable in state court actions involving the application of federal law. However, there is nothing in the holdings, dicta, or analysis of those cases which even suggests such a rule.

3. Respondent private interest groups have failed to rebut the case authorities cited by Alaska.

Besides their arguments' conceptual confusion and failure to establish any claim that the federal private cause of action doctrine is inapplicable when state courts apply federal law, the private interest groups have neither cited nor attempted to distinguish the two decisions from this Court and the three decisions from the federal Courts of Appeals which have held that there is no implied private cause of action to enforce conditions set forth in state admission acts. See cases cited in Alaska's Petition for a Writ of Certiorari at 21-25. They have cited no case which

has held to the contrary at any time or in any context. 4/

4. This case is deserving of Supreme Court review.

Respondent private interest groups claim in the introduction to their

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4/ Very recently the Hawaii Supreme Court held that whether the state executive officers had complied with Hawaii's Admission Act in allocation of funds received from lands granted to the state at statehood was a nonjusticiable policy determination because, like section 6(i) of Alaska's Statehood Act, the Hawaii Admission Act stated that certain land trust provisions were to "be complied with by appropriate (state) legislation." Trustees of the Office of Hawaiian Affairs v. Yamasaki, 737 P.2d 446, 450, 455-457 (Hawaii 1987), petition for cert. filed, 56 U.S.L.W. 3258 (Oct. 6, 1987). In the instant case, the Alaska Supreme Court merely declared that the state's mineral leasing system violated section 6(i), but perhaps in recognition that it could not direct the state Legislature to pass any particular law without crossing traditional separation of powers boundaries, ordered no relief.

brief that the issues raised in Alaska's petition do not present issues of "sufficient importance to warrant further review by this Court." Resp. Br. at 1. However, this assertion is belied by the absence of any case law to support respondents' innovative claim that the federal limitations on the implication of private causes of action are inapplicable to federal law actions in state court. Surely, whether state courts are to be so unrestrained is an issue of state and federal importance going well beyond the facts of this case. The Alaska Supreme Court has erred on this important issue, and by correcting this error, the Court has the opportunity to definitively delineate the proper role of state courts when determining who

has a proper cause of action under federal law.

CONCLUSION

For the foregoing reasons, the State of Alaska respectfully requests that its petition be granted. It further suggests that the response by Trustees for Alaska and its associated private interest groups is so unsupported by law and logic that the decision of the Alaska Supreme Court should be summarily reversed.

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